

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

CHARLES WILLIE NOLAN,)	
)	
Petitioner,)	
)	
v.)	Case No. CIV-13-1074-HE
)	
TRACY MCCOLLUM, Warden,)	
)	
Respondent.)	

REPORT AND RECOMMENDATION

Petitioner Charles Willie Nolan, appearing pro se, has filed a Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus (Doc. No. 1). The matter has been referred to the undersigned magistrate judge for initial proceedings consistent with 28 U.S.C. § 636(b). The case comes before the Court on Petitioner's Motion for Summary Judgment (Doc. No. 6).

The Court previously ordered Respondent, Warden Tracy McCollum, to file a response to Mr. Nolan's Petition on or before January 24, 2014. Order, Doc. No. 5. Respondent did not file a response or otherwise respond by that deadline. Consequently, on February 10, 2014, Petitioner filed his Motion for Summary Judgment, citing Respondent's failure to respond. Pet'r's Mot. Summ. J. at 1.

On March 6, 2014, Respondent was ordered to show cause for his failure to respond to the Petition. Order, Doc. No. 7. By submission dated March 11, 2014, Respondent established that the Oklahoma Attorney General had not received the Petition and Order for Response as had been directed by the Court. *See* Resp't's Resp. to Order

to Show Cause, Doc. No. 9. The Court accepted that explanation as good cause for Respondent's failure to respond and Respondent was granted additional time to respond to the Petition. Order, Doc. No. 11, at 2. Within the additional time allotted, Respondent filed a Motion to Dismiss (Doc. No. 14).¹

Petitioner's Motion for Summary Judgment is predicated entirely upon Respondent's initial failure to respond to the Petition. *See* Resp't's Mot. Summ. J. at 1. As noted, the Court has accepted Respondent's explanation for his failure to file a timely response, and Respondent has since responded to the Petition by filing a motion to dismiss within the time allotted by the court. Thus, Petitioner's Motion for Summary Judgment should be denied.

RECOMMENDATION

For the foregoing reasons, the undersigned recommends that Petitioner's Motion for Summary Judgment (Doc. No. 6) be DENIED.

NOTICE OF RIGHT TO OBJECT

The parties are advised of the right to file an objection to this Report and Recommendation with the Clerk of this Court by July 9, 2014, in accordance with 28 U.S.C. § 636 and Federal Rule of Civil Procedure 72. The parties are further advised that failure to timely object to this Report and Recommendation waives the right to appellate

¹ Petitioner has sought and received extensions of time to respond to Respondent's Motion to Dismiss. Petitioner's current deadline to file a response is July 9, 2014. Order, Doc. No. 21. Thus, the matter is not yet ready for decision.

review of both factual and legal issues contained herein. *See Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991).

This Report and Recommendation does not terminate the referral in the present case.

ENTERED this 18th day of June, 2014.

A handwritten signature in blue ink, reading "Charles B. Goodwin", is positioned above a horizontal line.

CHARLES B. GOODWIN
UNITED STATES MAGISTRATE JUDGE